

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 01-20 (Part A)

Pursuant to 220 C.M.R. 1.04(5), Verizon Massachusetts (“Verizon MA” or “Company”) hereby moves the Department of Telecommunications and Energy (“Department”) to extend the procedural schedule, pending completion of prehearing discovery. Under the Revised Procedural Schedule issued by the Department on July 13, 2001, parties are scheduled to file surrebuttal testimony on August 21, 2001. As described below, given the fact that the final resolution of all discovery matters will not be completed in time to permit information to be incorporated into the surrebuttal testimony, the schedule must be extended.

On May 8, 2001, parties made their initial filings relating to the costs of providing Unbundled Network Elements (“UNEs”) and combinations of UNEs in Massachusetts. AT&T Communications of New England, Inc. (“AT&T”) sponsored the HAI 5.2a-MA Model to estimate the cost of providing UNEs. On May 17 and 18, 2001, Verizon MA served AT&T with three sets of information requests, most of which were designed to obtain information relating to AT&T’s model and its reasonableness with respect to AT&T’s own network experience. It was Verizon MA’s intent to use the information to perform its analysis of the HAI 5.2a-MA Model’s platform methodologies, input values,

and the accuracy of the cost estimates it produces. This analysis would, in turn, be used to prepare rebuttal testimony, which was due on July 16, 2001. AT&T objected to or failed to respond to many of the information requests. After consultation between the parties to resolve disagreements over discovery, more than 60 requests remained unresolved and became the subject of Verizon MA's July 5, 2001 Motion to Compel. Verizon MA filed rebuttal testimony on July 18, 2001¹ without the benefit of the requested information. A Hearing Officer Ruling on the Motion to Compel was issued on August 8, 2001, which granted the Motion to Compel in some respects and denied it in other respects. On this date, Verizon MA has appealed certain portions of the Hearing Officer Ruling.

As indicated above, the primary purpose of Verizon MA's first sets of discovery was to gather information relevant to the HAI 5.2a-MA Model, so that Verizon MA's witnesses could prepare rebuttal testimony. Under the present schedule, the final opportunity to present prefiled testimony is on August 21, 2001, when surrebuttal testimony is due. Verizon MA must be given to opportunity to analyze and evaluate all discovery responses before it will be in a position to present its final surrebuttal testimony. It has not yet received the responses that were ordered by the Hearing Officer.² Moreover, the Hearing Officer Ruling deprived Verizon MA of much of the information it has sought, and the appeal to the Commission requests that responses to additional requests be compelled.

¹ The filing date for rebuttal testimony had been extended to July 18, 2001.

² It is conceivable that AT&T will be appealing to the Commission regarding those portions of the Hearing Officer's Ruling that granted Verizon MA's Motion to Compel.

In addition, discovery responses have been received from a number of intervenors over the past week relating to information requests issued by Verizon MA on rebuttal testimony filed on July 18, 2001. It is anticipated that Verizon MA will be filing one or more motions to compel responses to the latest rounds of information requests, since many of those responses interpose objections similar to those that are the subject of appeal of the Hearing Officer's prior ruling that Verizon MA filed today, or are otherwise unresponsive to the questions posed.³

Until there is a final resolution of discovery disputes, and Verizon MA receives all information finally ordered by the Department, it is not in a position to file surrebuttal testimony. Accordingly, Verizon MA respectfully requests that the Department extend the procedural schedule to permit the filing of surrebuttal testimony two weeks after final responses to discovery requests are received. This will allow for the resolution of all discovery disputes by the Department, the review of information by Verizon MA's witnesses and the preparation of testimony. At that time, the Hearing Officers would be able to set a definitive schedule for evidentiary hearings and the filing of briefs.

In making this request, Verizon MA does not seek to delay the proceeding for an extended period. Once discovery is complete, the case can move forward quickly. One of the Department's purposes of discovery is to reduce hearing time and narrow issues. 220 C.M.R. § 1.06(6)(c)(1). By having complete, prefiled cases submitted before hearings begin, the case should proceed expeditiously, with all direct testimony disclosed to parties and the Department before evidentiary hearings, through pre-filing. Verizon

³ Verizon MA has not yet conferred with intervenors in an attempt to resolve any discovery disputes. Verizon MA will file motion(s) to compel only if it is unable to reach an appropriate resolution with parties.

MA asks the Department to avoid piecemeal litigation that would occur if Verizon MA were required to file final testimony without the benefit of receiving essential information, and then try to supplement the record when additional material is provided. The scope of this proceeding is enormous, and it is essential, from the standpoint of administrative efficiency and the need to compile a complete and accurate record, that pre-hearing discovery be completed before the evidentiary portion of the hearing commences.

WHEREFORE, Verizon MA requests that the procedural schedule in this proceeding be extended, and that the filing date of surrebuttal testimony be set by the Hearing Officers to a time two weeks after final responses to discovery requests are received.

Respectfully submitted,

Verizon Massachusetts

Bruce P. Beausejour
185 Franklin Street, Room 1403
Boston, Massachusetts 02110-1585
(617) 743-2445

Robert N. Werlin
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

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